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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,875	06/04/2001	Luis Francisco Vazquez Del Mercado	1691-8	3177

7590 06/04/2003
Harrison and Egbert
7th Floor
412 Main Street
Houston, TX 77002

EXAMINER	
WILLS, MONIQUE M	
ART UNIT	PAPER NUMBER

1746

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/872,875	MERCADO ET AL.	
	Examiner Wills M Monique	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 March 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 4-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) Interview Summary (PTO-413) Paper No(s) _____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertrand et al. WO009905732A1.

Bertrand teaches a method for the continuous manufacture of acid lead positive battery grids, comprising the following steps: a) preparing a lead alloy containing calcium, at a relative concentration ranging between 0.04 wt.% and 0.12 wt.%, of tin at a relative concentration less than 3 wt.%, aluminium, at a relative concentration ranging between 0.001 wt.% and 0.035 wt.%, and barium, at a relative concentration

ranging between 0.02 wt.% and 0.1 wt.%; b) carrying out a continuous casting of said lead alloy; c) mechanically treating said continuous alloy casting to form said positive grids. The cell also contains negative grids. See abstract. The lead alloy also contains 0.005 to 0.005 % by weight of silver (pg. 5, lines 30-35).

Bertrand is silent to a silver content of 0.006 – 0.010%. The reference does not expressly disclose the use of a plurality of positive and negative grids.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to employ a silver content of 0.006 – 0.010%, because a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ773 (Fed. Cir. 1985).

Regarding the employment of a plurality of negative and positive electrodes, It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a plurality of electrode plates , since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Conclusions

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Monique Wills whose telephone number is (703) 305-0073. The Examiner can normally be reached on Monday-Friday from 8:30am to 5:00 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

If attempts to reach Examiner by telephone are unsuccessful, the Examiner's supervisor, Randy Gulakowski, may be reached at 703-308-4333.

The unofficial fax number is (703) 305-3599. The Official fax number for non-final amendments is 703-872-9310. The Official fax number for after final amendments is 703-872-9311.

Mw

05/31/03



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